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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

DAVID VILLAGRANA,

Plaintiff and Appellant,

v.

GLENDALÉ ADVENTIST MEDICAL
CENTER et al.,

Defendants and Respondents.

B270707

(Los Angeles County
Super. Ct. No. EC058196)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Roy L. Paul, Judge. Affirmed.

David Villagrana, in pro. per., for Plaintiff and Appellant.

Carroll, Kelly, Trotter, Franzen, McBride & Peabody,
Michael J. Trotter, Brenda M. Ligorsky, and David P. Pruett for
Defendant and Respondent Glendale Adventist Medical Center.

Cole Pedroza, Kenneth R. Pedroza and Tammy C. Weaver
for Defendants and Respondents Selena Lantry and Michael
Frields.

Plaintiff and appellant David Villagrana, individually and as guardian ad litem for his minor sons, David Villagrana, Jr. and Marco Cris Villagrana, appeals from the judgment entered in favor of defendants and respondents Glendale Adventist Medical Center (Glendale Medical), Michael Frields, M.D. (Frields), and Selena Lantry, M.D. (Lantry),¹ after the trial court granted defendants' motion for nonsuit in this action for wrongful death and medical malpractice. We affirm the judgment.

BACKGROUND

Plaintiff commenced this action in April 2012. His operative third amended complaint alleges the following facts: In March 2010, decedent Maricris Villagrana (Villagrana) consulted with Lantry about the possibility of acting as a surrogate mother. At the time, Villagrana was married to plaintiff, and they had two minor children together.

Plaintiff, Villagrana, and the prospective parents executed a contract for Villagrana to act as a surrogate mother. Villagrana became pregnant by implantation of fertilized embryos in August 2010.

On February 28, 2011, Villagrana called Lantry's office, complaining of pain and fever, and was told to take Sudafed and Tylenol for her complaints. On March 1, 2011, Villagrana went to Lantry's office for a medical appointment and was sent to Glendale Medical because of vaginal spotting. That same day, an emergency caesarian section was performed by Frields, resulting in the birth of twins.

While in the recovery room, Villagrana continued to bleed internally and complained of pain and discomfort in her legs. An examination revealed bruising on her abdomen that had not been present during the surgery. Villagrana continued to complain of

¹ Glendale Medical, Frields, and Lantry are referred to collectively as defendants.

pain in her legs and abdomen, difficulty breathing, and confusion. A vaginal exam revealed large quantities of non-clotting blood and small amounts of clots, while the uterus was firm and blood pressure stable. A decision was made to return Villagrana to the operating room.

Villagrana's bleeding continued, and blood products were administered to control the hemorrhaging. Lantry, Frields, and other medical staff discussed performing a hysterectomy on Villagrana once she stabilized, in order to prevent further blood loss. A hysterectomy was not performed because Villagrana died while in the ICU. Plaintiff alleged that defendants were negligent in caring for and treating Villagrana before, during, and after the surgery.

PROCEDURAL HISTORY

The trial commenced on November 20, 2015, and a jury was impaneled and sworn on November 25, 2015. Plaintiff testified as the first witness. On December 1, 2015, plaintiff's non-designated expert witness, Juan Carrillo, M.D. (Carrillo), testified. Carrillo, a deputy medical examiner from the Los Angeles County Coroner's Office, had performed the autopsy on Villagrana. Carrillo testified that the cause of Villagrana's death was tearing of the placenta, causing amniotic fluid to enter the maternal bloodstream, including the lungs (a condition known as amniotic fluid embolism, or AFE), resulting in a "cascade of problems," including impairment of the clotting process and excessive bleeding. On cross-examination Carrillo testified that AFE is an unpredictable, mostly untreatable condition, and that patients who develop AFE have a death rate greater than 60 percent. Carrillo further testified that he told plaintiff's counsel, Claire Espina, during pretrial meetings with her, that the cause of Villagrana's death was placental abruption leading to AFE and resulting complications.

On redirect examination, Espina initially sought to elicit testimony from Carrillo about what he had told her during their pretrial meetings. When defendants' counsel objected, Espina requested a sidebar conference, at which she stated that Carrillo's testimony regarding the cause of Villagrana's death was inconsistent with what he had told her during their pretrial meetings: "I met with this coroner twice. I had my associate with me, and none of this testimony that this is what he said is what he is saying on the stand, and it puts me in a very difficult position having to deal with this witness who has now turned hostile on me." Espina sought leave to testify as a witness, or to have her associate testify, in order to impeach Carrillo. Defendants' counsel objected on the grounds that Carrillo's testimony was consistent with his autopsy report and that plaintiff could have deposed Carrillo instead of meeting privately with him to avoid surprise during his trial testimony. After an extended sidebar discussion with counsel for all the parties, the trial court stated that its intended ruling would be to deny Espina's request. The parties then agreed to excuse Carrillo as a witness, and the trial resumed with continued testimony by plaintiff.

The following day, Espina informed the trial court that plaintiff had terminated her services and that she did not know who would replace her as plaintiff's counsel. The trial court then stated that it had reconsidered its intended ruling from the previous day and that it would allow Espina or her associate to testify for the purpose of impeaching Carrillo. Plaintiff indicated, however, that he was unwilling to continue with Espina as his counsel because he had lost confidence in her. The court admonished plaintiff that while he had the right to be represented by an attorney of his choosing, the court did not find discharging his attorney of record to be good cause for continuing

the trial, and that plaintiff should be prepared to call his next witness. When plaintiff stated he could not do so, defendants moved for nonsuit, and the trial court granted the nonsuit motions. Judgment was subsequently entered in defendants' favor.

CONTENTIONS ON APPEAL

Plaintiff contends the trial court committed reversible error by (1) denying Espina's request that Carrillo be declared a hostile witness for purposes of impeaching his testimony; (2) denying his counsel the opportunity to testify at trial in order to impeach Carrillo's testimony; (3) denying plaintiff leave to find new counsel after he terminated the services of his trial counsel for lack of confidence; and (4) granting defendants' motion for nonsuit.

DISCUSSION

Impeachment of Carrillo's testimony

We address together plaintiff's first and second contentions regarding impeachment of Carrillo's testimony. The record shows no request by Espina to declare Carrillo a hostile witness, nor any ruling by the trial court denying such a request. The only mention of the word "hostile" occurred during a sidebar conference when Espina described Carrillo as having "turned hostile on me." The record discloses no error.

The record also discloses no reversible error based upon any order denying plaintiff's counsel the opportunity to testify as a witness at trial in order to impeach Carrillo's testimony. Although the trial court initially stated that it was inclined to deny Espina's request to testify as a witness, or to allow her associate to testify, the court informed the parties when trial resumed the following day that it had reconsidered its intended ruling and would allow plaintiff's counsel to testify for purposes

of impeaching Carrillo.² Plaintiff insisted, however, that he was discharging Espina and no longer wanted her as his attorney because he had lost confidence in her. The record shows no reversible error by the trial court.

Denying plaintiff leave to find new counsel

The trial court did not abuse its discretion by not continuing the trial to allow plaintiff time to find new trial counsel. A reviewing court must uphold a trial court's decision not to grant a continuance absent an abuse of discretion. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823.) The party challenging the denial of a continuance bears the burden of showing an abuse of discretion. (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170.)

Continuances of trial in civil cases are disfavored, assigned trial dates are firm, and parties and their counsel must regard the trial date as certain. (Cal. Rules of Court, rule 3.1332(a), (c).)³ A party seeking a continuance must make the request by a noticed motion or an ex parte application, with supporting declarations, as soon as reasonably practicable once the need for the continuance is discovered. (Rule 3.1332(b).) A trial court “may grant a continuance only on an affirmative showing of good

² Plaintiff's opening brief discusses at length the applicable legal standard for an attorney of record seeking to testify as a witness at trial and reasons why the trial court's initial intended ruling precluding Espina from testifying was in error. That discussion is not relevant given the trial court's reversal of its initial ruling, plaintiff's refusal to continue with Espina as his counsel, and plaintiff's admitted inability to present any further witnesses.

³ All further references to rules are to the California Rules of Court.

cause requiring the continuance.” (Rule 3.1332(c).) Good cause may be found where there is a “substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice.” (Rule 3.1332(c)(4).) In ruling on a motion for continuance, the trial court must consider all relevant facts and circumstances, including the proximity of the trial date; whether previous continuances were granted; the length of the requested continuance; prejudice that parties or witnesses will suffer as a result of a continuance; whether the case is entitled to preferential trial setting; and whether the interests of justice are best served by a continuance. (Rule 3.1332(d).)

Civil litigants have the right to appear by counsel retained at their own expense (*Kim v. Orellana* (1983) 145 Cal.App.3d 1024, 1027), but this does not excuse a litigant, who has substituted into the case in propria persona, from following appropriate rules and procedures in seeking a continuance to obtain counsel, nor does it necessarily entitle the litigant to a continuance. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639 [litigant in propria persona not entitled to greater consideration than other litigants or attorneys and is held to same rules of procedure as an attorney]; *County of San Bernardino v. Doria Mining & Engineering Corp.* (1977) 72 Cal.App.3d 776, 783 [no abuse of discretion in denying request for continuance made on day of trial based on substitution of counsel, when request did not comply with procedural requirements and there was no showing that substitution was necessary]; *Slaughter v. Zimman* (1951) 105 Cal.App.2d 623, 625 (*Slaughter*) [denial of request for a continuance, made in propria persona after attorney’s withdrawal, not an abuse of discretion when court admonished litigant that attorney’s withdrawal would not be ground for a continuance].) If the litigant does not show diligence in obtaining

replacement counsel or that the substitution of counsel was necessary, it is not an abuse of discretion to deny a continuance even where it results in the deprivation of legal representation. (7 Witkin, Cal. Procedure (5th ed. 2008) Trial, § 14, pp. 41-43.)

Plaintiff's termination of his attorney, in the middle of trial, without having retained new counsel or obtaining his client file or any documents in the case, for the stated reason that he "lost confidence" in his attorney of record, is not "an affirmative showing that the substitution is required in the interests of justice." (Rule 1.332(c)(4); *Slaughter, supra*, 105 Cal.App.2d at p. 625.) The trial court did not abuse its discretion by not continuing the trial.

Motion for nonsuit

Plaintiff's sole basis for challenging the grant of nonsuit is the trial court's refusal to continue the trial after plaintiff discharged Espina as his attorney. For reasons discussed, the trial court did not err by refusing to continue the trial.

A defendant is entitled to a nonsuit if the trial court determines, as a matter of law, that the evidence presented by the plaintiff is insufficient to permit a jury to find in his favor. (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291 (*Nally*)). An appellate court independently reviews the grant of a nonsuit, viewing the evidence in the light most favorable to the appellant. (*Legendary Investors Group No. 1, LLC v. Niemann* (2014) 224 Cal.App.4th 1407, 1412.)

The record shows that after plaintiff discharged Espina as his counsel, the trial court addressed plaintiff and inquired: "Mr. Villagrana, are you able to call your next witness?" Plaintiff replied: "I'm unable to call a witness, yes." The trial court then clarified: "So, Mr. Villagrana, is it my understanding that you are unable to proceed at this time?" Plaintiff responded "yes." Based on plaintiff's representations, the trial court did not err by

concluding, as a matter of law, that there was no evidence sufficient to support a jury verdict in plaintiff's favor. (*Nally, supra*, 47 Cal.3d at p. 291.)

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST